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Attorneys for Defendants Apollo Group, Inc.

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,

Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**DECLARATION OF NATHAN W.
HICKS IN SUPPORT OF APOLLO
GROUP, INC.'S MOTION TO SET
ASIDE ENTRY OF DEFAULT**

[FRCP 55(c)]

Date: April 7, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

Snell & Wilmer

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LAW OFFICES
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USDC-SOUTHERN DISTRICT CALIFORNIA
CASE NO. 07-CV-2373 WQH CAB

DECL. OF N. HICKS IN SUPPORT OF MOTION TO SET ASIDE ENTRY OF DEFAULT

1 I, Nathan W. Hicks, declare and state as follows:

2
3 1. I am an attorney licensed to practice law before all courts of the State
4 of California and I am a member of the law firm of Snell & Wilmer, attorneys of
5 record for defendant Apollo Group, Inc. ("Apollo") and the University of Phoenix,
6 Inc. ("UOP") in this matter. I have personal knowledge of the matters set forth in
7 this declaration, and if called upon as a witness, I could competently testify to them.

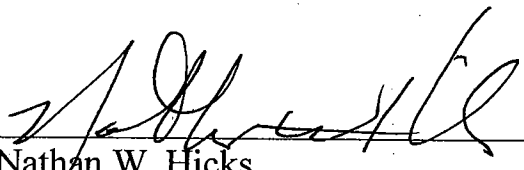
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9 2. Plaintiff, Chad McKinney ("McKinney"), filed the complaint in the
10 above-captioned matter on December 19, 2007. McKinney, however, did not
11 obtain a summons issued by the Court until approximately one month later on
12 January 15, 2008. A true and correct copy of the summons issued by the Court as
13 reflected in the Court's website at [https://ecf.casd.uscourts.gov/cgi-](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1)
14 [bin/DktRpt.pl?117733301982358-L_353_0-1](https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1) is attached as Ex. A. According to
15 McKinney's Return of Service filed with the Court on February 28, 2008, a process
16 server attempted to serve Apollo "by leaving copies with Ellen Bowens
17 (Administration)" on January 31, 2008. A true and correct copy of McKinney's
18 Return of Service as reflected in the Court's website at
19 https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1 is
20 attached as Ex. B. Based on McKinney's assertions that Apollo was given
21 sufficient service of process on January 31, 2008, the Court Clerk made an entry of
22 default on February 29, 2008. A true and correct copy of the Court Clerk's entry of
23 default against Apollo as reflected in the Court's website at
24 https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?117733301982358-L_353_0-1 is
25 attached as Ex. C.

26
27 3. On February 29, 2008, I contacted McKinney by telephone and
28 explained that he had not given sufficient service of process to Apollo, and that the

1 parties should stipulate to setting aside the entry of default. Afterwards, McKinney
2 could then attempt to properly re-serve Apollo, UOP or both. Nevertheless,
3 McKinney still refused to stipulate to setting aside the entry of default on Apollo.
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5 I declare under penalty of perjury under the laws of the State of California
6 that the foregoing is true and correct.
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8 Dated: March 7, 2008
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Nathan W. Hicks
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Snell & Wilmer
LLP

LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
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EXHIBIT A

AO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT SOUTHERN

District of California

Chad McKinney, Pro Se

SUMMONS IN A CIVIL CASE

V.

APOLLO GROUP INC., UNIVERSITY OF PHOENIX, a Corporation, MECHELLE BONILLA, an Enrollment Manager at UNIVERSITY OF PHOENIX, KYAN FLYNN, Director of Enrollment at UNIVERSITY OF PHOENIX, APRIL ALCORN, an Employee Relations Consultant at UNIVERSITY OF PHOENIX, CARLYN LINDSTEN, Associate Director of Enrollment at UNIVERSITY OF PHOENIX,

CASE NUMBER:

07 CV 2373 WQH CAB

TO: (Name and address of Defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Chad McKinney, Pro Se
6266 Madeline Street Apt. No. 61
San Diego, Ca 92115-5630

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

W. SAMUEL HAMRICK, JR.

JAN 15 2008

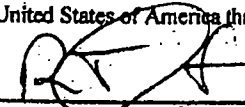
CLERK

DATE

(By) DEPUTY CLERK

EXHIBIT B

07 cv 2373 WQH(CAB)

RETURN OF SERVICE			
Service of the Summons and Complaint was made by me		DATE <u>2008 FEB 28 PM 1:00</u>	
NAME OF SERVER <u>R.T. Hansell</u>		TITLE <u>CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA</u>	
Check one box below to indicate appropriate method of service			
BY <u>YMK</u> DEPUTY			
<input type="checkbox"/>	Served personally upon the defendant. Place where served: _____		
<input type="checkbox"/>	Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein:		
Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/>	Return unexecuted:		
<input checked="" type="checkbox"/>	Other (specify): <u>Served Apollo Group, Inc. by leaving copies with Ellen Bowens (Administration).</u>		
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$ <u>45</u>
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on:	<u>2/12/08</u>	 Signature of Server	
Date	<u>2445 Morena Blvd., Ste 206</u> Address of Server <u>S.D. Ca 92110</u>		
NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE			
<p>IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.</p> <p>YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.</p> <p>JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.</p>			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

26

EXHIBIT C

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

Chad McKinney

Plaintiff,

vs

Apollo Group Inc.; Mechelle Bonilla; Kyan Flynn;
April Alcorn; Carlyn Lindsten

Defendants,

Civil No. 07cv2373-WQH-CAB
DEFAULT

It appears from the records in the above-entitled action that Summons issued on the Original Complaint filed on 12/19/07 has been regularly served upon each of the Defendants hereinafter named; and it appears from the records herein that each of the Defendants has failed to plead or otherwise defend in said action as required by said Summons and provided by the Federal Rules of Civil Procedure. Now, therefore, the DEFAULT of each of the following Defendants is hereby entered.

Apollo Group Inc.

Entered On:
2/29/08

W. SAMUEL HAMRICK, JR., CLERK

By:

s/M. Cruz

M. Cruz, Deputy

PROOF OF SERVICE
USDC – Southern District, Case No. 07-CV-2373 WQH CAB

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

On March 7, 2008, I served, in the manner indicated below, the foregoing document described as **DECLARATION OF NATHAN W. HICKS IN SUPPORT OF APOLLO GROUP, INC.'S MOTION TO SET ASIDE ENTRY OF DEFAULT** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney
 Pro Se
 6266 Madeline Street, Apt. #61
 San Diego, CA 92115

Plaintiff
 Tel: 619-634-3566

United States District Court
 Attention: Hon. Judge William Q. Hayes
 940 Front Street
 San Diego, CA 92101

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Costa Mesa, California.


 Anh Dufour